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|---|-------------|----------------------|---------------------|------------------|
| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
| 10/582,593  | 03/19/2007  | William Jones        | ACH-3026 US         | 2189             |
| 56744   | 7590        | 06/02/2009           |                     |                  |
| Albermarle Netherlands B.V.<br>Patent and Trademark Department<br>451 Florida Street<br>Baton Rouge, LA 70801 |             |                      | EXAMINER            |                  |
|   |             |                      | WALCK, BRIAND       |                  |
|   |             | ART UNIT             | PAPER NUMBER        |                  |
|   |             | 1793                 |                     |                  |
|   |             | MAIL DATE            |                     | DELIVERY MODE    |
|   |             | 06/02/2009           |                     | PAPER            |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**DETAILED ACTION**

***Status of Claims***

1. Claims 1-8 are pending where no claims have been amended. Claims 7-8 stand withdrawn from consideration.

***Response to Arguments***

2. Applicant's arguments filed 5/27/2009 have been fully considered but they are not persuasive.

Applicant argues that the finality of the previous office action is improper because Examiner relied upon new reference US 4,975,406 and the amendments made to claim 1 are reasonably expected. This is not persuasive because the newly amended rare earth metal content range in claim 1 was not present in any of the previous claims and the examiner can not be reasonably expected to anticipate the incorporation of subject matter from the specification into the claims. As such, applicants' amendments necessitated the new grounds of rejection and the finality of the previous office action is still deemed to be proper.

Applicant argues that election by original presentation in the previous office action is improper because the use of a catalyst is the same as a process using the catalyst. This is not found persuasive because a use claim is different from a process claim. The restriction of the claims as presented for examination in the most recent office action is maintained.

Applicant also argues that the catalyst could not be used in a materially different process, specifically stating that the catalyst could not be used in controlling vehicle

emissions. This is not found persuasive because applicant has not stated how or why the catalyst could not be used in controlling vehicle emissions.

Applicant argues that 37 C.F.R. 1.142 and MPEP 821.03 do not relate to restriction by original presentation. This is not found persuasive because form paragraph 8.04 of the MPEP titled "Election by Original Presentation" specifically points to sections 37 C.F.R. 1.142 and MPEP 821.03.

Applicant argues that there is no overlap with regards to the amount of rare earth metal or divalent metal in the composition of US 4,975,406 to Frestad and the composition of instant claim 1 because the weight percent of rare earth metal or divalent metal based on the weight of the catalyst coatings and carrier of Frestad as a whole supposedly does not overlap the instantly claimed ranges. This is not found persuasive because the coating of Frestad, not the catalyst and carrier of Frestad, is being relied upon and the coating of Frestad itself is an "oxidic catalyst composition" and thus the weight percent as disclosed in Frestad (i.e. based on weight percent of the coating) does overlap the instant claims.

Applicant argues that the instant claims are not obvious over Chin because chin states that "the amount of lanthanum and, optionally, other rare earth oxides in the discrete particles is not critical." This is not found persuasive because the composition of Chin still overlaps the instantly claimed ranges and applicant has presented no evidence to rebut the prima facie case of obviousness.

Applicant argues that claims 1-6 are not obvious in light of the teachings of Chin in combination with Kim because the composition is not obvious and neither reference

teaches the calcination of a physical mixture of the composition as claimed. This is not found persuasive because the composition is obvious as explained in the prior office action and Kim teaches the calcination of a precipitate, and a precipitate is a physical mixture.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Walck whose telephone number is (571)270-5905. The examiner can normally be reached on Monday-Friday 9 AM-6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Roy King can be reached on (571)272-1244. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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